IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

INCOME TAX APPEAL NO.609 OF 2003

The Commissioner of Income Tax,
Mumbai city IX, Mumbai. Appellant

vs.

Shri Rameshbhai R. Trivedi Respondent

Mr.B.M.Chatterjee i/b. Mr.S.S.Sarkar for the appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 28th October 2004

P.C.

Heard Mr.B.M.Chatterjee, the learned counsel for the revenue.

2. In the memo of appeal, the following question of law has been proposed:

> "Whether revised return can be filed under sub-section 5 of 139 in a case where a return has been filed under section 139(4)?"

3. The Income Tax Appellate Tribunal relied upon the judgement of the Supreme Court in the case of Kumar Jagdish Chandra Sinha v. CIT (1996) 220 ITR 67 and observed in paragraph 12 thus:

> ".....Whether the assessee can file the revised return if the original return is belated, we find that this issue now stands concluded by the decision of the Apex Court rendered in the case of Kumar Jagdish Chandra Sinha vs. CIT (1996) 220 ITR 67(SC). Hon'ble

> Supreme Court has held that no revised return can be filed under sub-section (5) of section 139 in a case where the return is filed under section 139(4) of the Act. In view of this, the revised return filed by the assessee was non-set. If could not have been treated and acted upon as revised return contemplated by sub-section (5) of section 139 of the Act. Respectfully following the decision of the Apex Court, we uphold the order of the CIT(A) on this count."

4. We fail to understand as to why the revenue has preferred this appeal when on this question the income tax Tribunal has relied upon the judgment of the Supreme Court and upheld the legal position set up by the revenue.

5. Appeal is dismissed in limine.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)